Thomson J. did express the hope that the matter being of such importance be taken further. This is what his Lordship said:—

"Such is my opinion as to the question of law that arises in the case. I may be right and I may be wrong. As the matter is of some importance, I can only express a hope that it may be taken further."

In the present appeal the difficulty already referred to does not really arise for it is abundantly clear that at the time the appellant applied for the warrant of distress the land on which the two premises stand was State land, good and proper, and that whatever rights the deceased, P. Kunjahamad, had over the land had died with him and did not pass on his intestacy. Accordingly it must be held that the appellant, as representative, did not at the material time have any right to distrain the respondent's property for non-payment of rent. The magistrate's decision is therefore upheld and this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *D. A. Devadason; Sault, Keith Sellar & Co.*

Re application of LOWER PERAK MOTOR SERVICE CO. LTD.

[O.C.J. (Raja Azlan Shah J.) June 26, 1967]

[K.L. — Originating Motion No. 8 of 1967]

Industrial Law — Trade dispute — Statutory time limit for reference to tribunal by Minister — Definition of "trade dispute" in Essential (Trade Disputes in the Essential Services) Regulations, 1965 — Factors which give representative status to union — Recognition of union as trade union — Whether this is a specified subject matter of a trade dispute under the Regulations.

This was an application by motion for leave to be granted for an order of prohibition to issue to the Industrial Arbitration Tribunal, prohibiting adjudication upon a dispute between the company applicant, and the Transport Workers' Union Federation of Malaya, the respondents, the Minister of Labour being represented by the federal counsel.

The dispute was whether the company should recognise the Transport Workers' Union as distinct from the question of its representative capacity as the bargaining agent for the workmen employed by the company.

Upon the company's continued reluctance to accept the union's claim for recognition the union on November 24, 1966 reported to the Minister of Labour that there existed a trade dispute between the company and its workmen whom the union claimed it represented.

By March 16, 1967 the company was still unyielding and adamant on its stand. The secretary to the Ministry of Labour informed the company that the Minister had with effect from March 16, 1967 accepted the report of the union dated November 24, 1966 under regulation 4(4) of the Essential (Trade Disputes in the Essential Services) Regulations, 1965. that there existed a trade dispute and on April 8, 1967 referred the dispute to Industrial Arbitration Tribunal.

The hearing before the tribunal fixed on May 5, 1967 was adjourned *sine die* because of the present application.

The validity of the hearing was attacked on two grounds: (a) it was said that no trade dispute existed as defined under the Trade Union Ordinance 1959 or the Essential (Trade Disputes in the Essential Services) Regulations, 1965; (b) the reference by the Minister, if it was valid at all, was made only after the time prescribed by regulation 7 of the Essential (Trade Disputes in the Essential Services) Regulations, 1965 had expired under the notification by the Secretary to the Ministry of Labour. This was outside the prescribed period of twenty one days.

With regard to (b) the notification of the failure to reach a settlement was made on April 8, 1967. It was said that the requirement of regulation 7 had been violated as the notification ought to have been made within twenty one days of the report. A contrary view taken by the respondent was that the Minister must be deemed to have postponed such notification, which he did, as long as such postponement did not exceed seven days.

With regard to (a), it was contended that the employer-union dispute was not a dispute between the specified parties of a trade dispute and that the union recognition was not "connected with" the specified subjectmatter of a trade dispute.

Held: (1) trade unions and employers' association have no *locus standi* unless they represent workmen and employers who are actual parties to a trade dispute. In this case the union acted for its members and in consequence the dispute is one between "employers and workmen";

(2) on the question as to whether "union" recognition" is "connected with" the specified subjectmatter of a trade dispute, there was here a trade dispute within the meaning of the regulations, in consequence the jurisdiction of the tribunal was established;

(3) when the company did not see fit to recognise the union as being representative of its members, a trade dispute came into existence. Since the dispute was referred to the Minister by a trade union representing the workmen members, that fact gave power to the Minister to refer it to the tribunal which therefore has jurisdiction to hear the dispute;

(4) for the purpose of the Regulations, the dispute was reported to the Minister when he formally accepted it on March 16, 1967 i.e. after he had acquainted himself with the company's stand in the dispute. His decision in that matter was final and conclusive;

(5) it must be assumed that the Minister had exercised his discretion in postponing the notification in the light of the special circumstances of the case.

Cases referred to:—

(1) *Larkin* v. *Long* [1915] A.C. 814, 832.

(2) *National Association of Local Government Officers* v. *Bolton Corporation* [1934] A.C. 166, 189.

(3) *R.* v. *National Arbitration Tribunal; Ex parte Keable Press Ltd.* [1943] 2 All E.R. 633, 634, 636.

(4) *Beetham* v. *Trinidad Cement Ltd.* [1960] A.C. 132, 133, 144.

(5) *Stratford & Son Ltd.* v. *Lindley* [1965] A.C. 269, 281, 334.

ORIGINATING MOTION.

N. Sharma for the applicant.

Au Ah Wah (Senior Federal Counsel) for the first respondent.

R. Rajasingam for the second respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is a motion by the Lower Perak Motor service Co. Ltd. for an order of prohibition to prohibit the Industrial Arbitration Tribunal from adjudicating upon a dispute between the company and the Transport Workers' Union, Federation of Malaya, whether the company should recognise the trade union as distinct from the question of its representative capacity as the bargaining agent for the workmen employed by the company. That is the case for the company as it is pleaded in the motion.

The case was started on the basis of a letter dated 22nd April, 1966 from the general secretary of the union to the managing director of the company in the following terms:—

"We take the pleasure in informing you that we represent the workers employed in your company. We have been informed that your company has dismissed two employees, namely, Mohd. Kassim and Veeramaney s/o Krishnasamy on 14th March, 1966. We would be pleased if you will kindly inform us the reasons leading to the dismissal of these two workers. We hope the company will extend its co-operation in creating healthy employer/employee relationship".

On 12th May, 1966 the company replied stating that the workmen were asked to leave because their work and conduct were unsatisfactory. The union did not accept the bare statement and asked for more detailed information. The company ignored the union's request. On 12th July, 1966 the union wrote again to the company informing them that the majority of the company's workmen were union members, and again sought recognition as the sole representative body of the workers employed by the company. In the meantime the union received complaints from its members that the company had already begun to intimidate workers from joining the union. By a letter dated 21st July, 1966, the general secretary reminded the company of its claim for recognition and on the subject of dismissal of the two workmen, and appealed to the company to refrain from anti-union activities in the form of victimising workers and restraining them from joining the union. On 26th July, 1966 the union in its letter accused the company of conducting large-scale transfers of workers from one job to another in order to discredit the union and frustrate the members, and instanced the case of P. Munusamy, a fitter, who was transferred to the job of a driver. On the same date the company wrote to the union denying the allegation of anti-union activities but at the same time stated that their directors were considering union recognition. In its letter of 2nd August, 1966 the union again urged the company to recognise the union, and it is necesary to reproduce the said letter:—

"Your indirect action on the workers discouraging them from participating in union activities has also been reported to the Ministry of Labour by the workers themselves. Necessary investigations are being conducted by the Ministry of Labour in this matter. We will be pleased if you will kindly extend recognition to this union without further delay".

On that same day the Assistant Commissioner for Industrial Relations, Perak, wrote to the manager of the company appointing a date for discussing between them in connection with the union's claim for recognition and other industrial relation matters. On 5th August, 1966 the managing director of the company informed the union that he had sent a list of their employees for union membership check and as soon as the result was known the company would consider the question of recognition. On that day the company sent a list of their employees to the Commissioner for Industrial Relations at Kuala Lumpur and upon request they sent a fresh list giving details on 2nd September, 1966. The check, conducted on the lines agreed upon between the Federation of Malaya Employers Consultative Association and the Malaysian Trade Union Congress disclosed that 52 per cent. of the company's workers, excluding office staff, directors, and ticket collectors, were union members. On 14th October, 1966 the union informed the company of the result and again urged for immediate recognition. The company again ignored the union's claim. On 24th November, 1966 the union reported to the Minister of Labour under regulation 4 of the Essential (Trade Disputes in the Essential Services) Regulations, 1965, of the existence of a trade dispute between the company and their workmen, and I quote the said letter:—

"Dispute between Lower Perak Motor Service Company Ltd. and the Transport Workers' Union, Federation of Malaya.

This union has been seeking recognition from the Lower Perak Motor Service Company Ltd. since 22nd April, 1966. The union is of the firm belief that the company is deliberately applying delaying tactics with a view of driving the members into frustration and discrediting the union. Therefore we will be pleased if you will kindly refer the dispute to the Industrial Arbitration Tribunal. Issues under dispute are: (a) recognition of the union, (b) unnecessary transfer of union members".

On 6th February, 1967 the company informed the commissioner that it had made its own assessment and found that only 20 per cent. of its workers were union members and in those circumstances it was not prepared to accord recognition to the union. In the affidavit of Mohamed Yaacob, managing director of the company, dated 14th May, 1967, filed in support of the company's application for leave, he stated that the check was conducted by the Ministry from books belonging to the union and in the absence of any opportunity to the company to verify the veracity of those books the company was not bound by the result. On 22nd February, 1967 the commissioner asked the

company for its present stand before formally accepting the union's report of 24th November, 1966 and commencing action under the Regulations. The company still maintained its present stand. On 16th March, 1967 the secretary to the Ministry of Labour and Industrial Relations informed the company that with effect from that date the Minister had accepted the report of the union dated 24th November, 1966 under regulation 4(4) of the existence of a trade dispute between the company and its employees who were represented by the union on the union's request for recognition and "that officers of the Ministry would be contacting your company in due course". On 8th April, 1967 the Minister referred the dispute to the Industrial Arbitration Tribunal in the following terms:—

'Essential (Trade Dispute in the Essential Services) Regulations, 1965.

Dispute between the Lower Perak Motor Service Company Ltd. and the Transport Workers' Union, Federation of Malaya.

I am directed to refer to the above-mentioned dispute regarding the demand of the union that the employer should recognise the said union which according to the report of the latter was officially accepted on 16th March, 1967, and therefore vide article 7 of the above regulation I am to inform that all steps taken to settle the dispute had not met with any success and the Hon'ble Minister for Labour under article 8 of the above-mentioned regulation today has referred the matter to the Industrial Arbitration Tribunal for settlement.

2. The secretary to the Industrial Arbitration Tribunal, Enche Ng Kim Seang, will communicate with you about the trial of this dispute".

The hearing before the tribunal fixed on 15th May, 1967 was not heard because of the present application.

The validity of the hearing was attacked on two main grounds. *First,* it was said that no trade dispute existed as defined under the Trade Union Ordinance, 1959, or the Essential (Trade Disputes in the Essential Services) Regulations, 1965. Enlarging the argument, it was contended that this company-union dispute did not come within the ambit of the prescribed parties or the prescribed subjectmatter of a trade dispute. Therefore it was said that the Minister had acted *ultra vires* the provisions of the law relating to trade disputes when he made the reference. *Secondly,* the reference by the Minister, if it was valid at all, was made only after the time prescribed by regulation 7 of the Essential (Trade Disputes in the Essential Services) Regulations, 1965, had expired under the notification by the secretary to the Minister of Labour. This was outside the prescribed period of twenty-one (21) days.

I will first deal with the second contention, and with a view to decide this point it is convenient to state briefly the statutory provisions relating to trade disputes. The Essential (Trade Disputes in the Essential Services) Regulations, 1965, give a wide discretion to the Minister in a case where a trade dispute in any essential service exists or is apprehended to take such steps as are necessary or expedient to promote a settlement of such dispute in accordance with regulation 5 which, by no means exhaustive, includes reference to existing machinery agreed upon between the parties. He can either act on a written report of a trade union representing the workmen who are parties to the dispute (regulation 4(1)) or on the balance of public interest so that the matter can be settled without delay (regulation 6). The report must clearly state the names of the parties and the specific matters in dispute (regulation 4(2)). The Minister may require additional particulars of the report, in which case the trade dispute shall be deemed to have been reported to him only after such additional particulars have been furnished to him (regulation 4(3)). The regulations empower him to determine whether or not a trade dispute has been reported to him, and if so, as to the date on which such report has been made to him, and his decision in this respect is final and conclusive (regulation 4(4)). When the steps taken by him proved abortive he must notify the parties of the failure to promote a settlement within 21 days from the date on which the dispute was reported to him, unless the special circumstances of the case make it necessary or desirable to postpone such notification, in which case the postponement must not exceed 7 days (regulation 7). Only then may the Minister refer the dispute to the Industrial Arbitration Tribunal (regulation 7).

In my view, for the purpose of the regulations the dispute was reported to the Minister when he formally accepted it on 16th March, 1967, i.e. after he had acquainted himself with the company's stand in the dispute. His decision in that matter was final and conclusive. The notification of the failure to reach a settlement was made on 8th April, 1967. Therefore, it was made 24 days after the dispute was "reported" to him. It was said that the requirements of regulation 7 had been violated as the notification ought to have been made on 5th April, 1967, i.e. within 21 days of the report. A contrary view taken by the respondents was that the Minister must be deemed to have postponed such notification which he could do as long as such postponement did not exceed 7 days. Mr. Sharma then argued that there was no evidence on record to show the existence of the special circumstances.

The phrase "unless in his opinion the special circumstances of the case make it necessary or desirable to postpone such a notification" confers an absolute discretion upon the Minister to postpone such notification for reasons which seemed to him necessary or desirable. It may

well be that he did not divulge his opinion, but I do not think that is a fatal defect. In the context of the letter of 16th March, 1967 "that the officers of the Ministry would be contacting your company in due course" it must be assumed that the Minister had exercised his discretion in postponing the notification in the light of the special circumstances of the case. In my opinion, the probabilities favour such an inference.

I now come to the first contention which can be divided into two parts: that the employer-union dispute is not a dspute between the specified parties of a trade dispute and that union recognition is not "connected with" the specified subject-matter of a trade dispute. The only question for the court is whether the contention is to be sustained or negatived. I have been referred to a multiplicity of authorities, but I think for present purposes I shall be absolved from any disrespect for the argument of counsel if I only refer to a few as they already contain material excerpts of the law relating to trade disputes.

The phrase "trade dispute" as defined in the Essential (Trade Disputes in the Essential Services) Regulations, 1965, means any dispute between employers and workmen, or between workmen and workmen connected with the employment or non-employment, or the terms of the employment or with the conditions of labour of any person. This definition reproduced identically the definition of "trade dispute" in section 5(3) of the (U.K.) Trade Disputes Act, 1906, although in subsequent U.K. legislation dealing with trade disputes the definition is enlarged by the addition of the words "or difference". In any event the definition contemplates a dispute between the specified parties and must be connected with the specified subject-matter. As the regulations containing the definition abrogates rights at common law it should be construed with reasonable strictness and not given a wider meaning than the words justify: *per* Lord Parker in *Larkin* v. *Long*.[1]

The regulations which specifically refer to two main sets of parties to a trade dispute, that is, employers and workmen, or workmen and workmen, make no mention of trade unions or employers' associations as parties in trade disputes. Normally they act on behalf of one side or the other or both sides. The legal position is that trade unions and employers' associations have no *locus standi* unless they represent workmen and employers who are actual parties to a trade dispute: see *National Association of Local Government Officers* v. *Bolton Corporation*.[2] But that, in my judgment, does not mean that the employer-workmen dispute must precede the union's intervention. Invariably the initiative in sparring for an opening is taken by the union, and as long as its workmen members subsequently adopt or ratify the dispute either expressly or impliedly, the dispute is one between "employers and workmen". That proposition received the approval of the Court of Appeal in *R.* v. *National Arbitration Tribunal, Ex parte Keable Press Ltd.*,[3] and was applied by the Judicial Committee of the Privy Council in *Beetham* v. *Trinidad Cement Ltd.*[4] In the *Keable Press* case the suggestion that the union had gone on a frolic of its own was rejected by the Court of Appeal because the men adopted the dispute by coming out on strike. In the *Trinidad Cement* case a similar suggestion was also rejected by the Judicial Committee of the Privy Council who took the view that the claim had been brought to the attention of the branch at Claxton Bay who may fairly be assumed to have approved it.

It was said that in the present case the union's claim for recognition was never instigated or authorised or approved by the union members of the company. Pausing there for a moment, I wish to express my opinion on the meaning of "union recognition" as used in the letter of 8th April, 1967. To my mind, the expression "union recognition" conveys to the ordinary mind that the employer refuses to negotiate with the union, i.e. refuses to recognise the union as the bargaining agent of its member employees. It is an accepted fact in all democratic countries that free trade unions have as one of their primary objects the representation of the interests of workmen in trade disputes (see for example the definition of "trade union" in section 2 of the Trade Union Ordinance, 1959). To suggest that it means a claim by the union for recognition simpliciter as distinct from its representative capacity is to adopt a narrow approach to the whole problem and in my view is contrary to the accepted meaning attributed to it in the context of the requirements of industrial relations. Lord Wright, when confronted with a similar situation in the *Bolton Corporation* case answered it by saying that "it would be strongly out of date to hold that a trades union cannot act on behalf of its members in a trade dispute . . .". Coming back to the argument that the union was acting on a frolic of its own, I am unable to accept this argument. All the correspondence between the union and the company annexed to the affidavit of Mohamed Yaacob, dated 14th May, 1967, amply bear out the fact that the union was claiming for bargaining status on behalf of its workmen members. If the union were to succeed in its claim then it would be able to promote the interests of the workmen far better than if it were unrecognised. Moreover, it can reasonably be inferred that the workmen members had approved of the union's claim. In the circumstances the union can therefore be properly

considered as acting for its members and in consequence the dispute is one between "employers and workmen".

The subject-matter of the dispute must also be related to a contract of employment and it is well settled that the dismissal or reinstatement or suspension of union members can all be the basis of a trade dispute. The material question that arises here is whether "union recognition" is "connected with" the specified subject-matter of a trade dispute. Mr. Sharma on behalf of the company strenuously urged upon me that since "union recognition" is not contemplated in the regulations it is not one of the specified subject-matters of a trade dispute. It is, I think, sufficient for me to say that this view has been rejected by the Judicial Committee of the Privy Council in the case of *Beetham* v. *Trinidad Cement Ltd.* In that case the company employed 300 to 500 men in a factory in Trinidad of whom 100 to 200 had formed themselves into a branch of the Federated Workers' Trade Union. The attitude of the company towards union intervention in its labour relations was hostile. Two union members employed by the company were dismissed and the union took up their case with the company but its attempt at negotiation was ignored. The union then asked the Commissioner of Labour to mediate, but that too proved abortive because of the attitude adopted by the company. The Minister of Labour unsuccessfully intervened. At this point the basis of the difference between the union and the company, initially confined to the question of limited recognition of individual grievances, was immensely widened. The union now wrote to the company claiming general recognition to bargain on behalf of the company's manual workers. A copy of that letter was sent to and approved by the Trinidad Cement branch of the union. The union's letter was ignored. The commissioner, at the request of the union, was again asked to conciliate and again was rebuffed by the company. The commissioner thereupon reported the matter direct to the Governor who on the same day appointed a board of enquiry. The validity of the enquiry was successfully challenged in the West Indian courts on the ground that there was at the relevant time no "trade dispute" between the company and the union. On appeal, the Judicial Committee of the Privy Council took the view that the dispute between the company and union covered the general recognition of the union as the bargaining agent of its members employed by the company. The question whether the dispute was "connected with" the specified subject-matter of a trade dispute was not answered directly by the Judicial Committee who held simply that the recognition dispute was a "trade dispute" which the Governor was therefore empowered to refer to a board of enquiry. In any event the observation forms part of the judgment and is as much an authoritative exposition of the law as the rest of the judgment. This view was approved *obiter* by the Court of Appeal and the House of Lords in *Stratford & Son Ltd.* v. *Lindley.*[5] In the Court of Appeal Lord Denning M.R., who was the same learned judge who delivered the judgment of the Privy Council in the *Trinidad Cement* case, said:—

> "It is not necessary that there should be a dispute between any individual workman and his employer. Suffice it that the union, on behalf of all its members, desires to be able to negotiate terms of employment, and the employer refuses to recognise it. There is thereupon a dispute between employers and workmen which is connected with the terms of employment, see *Beetham* v. *Trinidad Cement Ltd.*"

In the House of Lords, Lord Pearce put it in the following words:—

> "When a union makes a genuine claim on the employers for bargaining status with a view to regulating or improving the conditions or pay of their workmen and the employers reject the claim, a trade dispute is in contemplation even though no active dispute has yet arisen (see for instance *Beetham* v. *Trinidad Cement Ltd.*)".

It is in my judgment that there is here a trade dispute within the meaning of the regulations; in consequence the jurisdiction of the tribunal is established.

There were some minor objections which I can shortly answer. It was said that the report was made in much too vague a manner in that the reference to the parties was not clearly stated and the nature of the dispute was not specifically mentioned as required by regulation 4(2). The correct way, so it was said, was to name the parties as "between the company and members of the union in the employment of the company", and the report should also have contained sufficient particulars of the dispute. It may be that the strict rules of pleading have not been observed, but it has been made sufficiently clear to the Ministry what the dispute was and who the parties were. It must be noted that copies of all correspondence between the union and the company from 22nd April, 1966 to 14th October, 1966 were sent to both the Commissioner of Industrial Relations, Kuala Lumpur, and the Industrial Relations Officer, Perak. In the circumstances it appears to me that the conditions of regulation 4(2) have been sufficiently complied with.

It was then said that items 2, 3 and 4 of prayer 11 of the union's statement of case dealing with re-instatement, transfer and suspension respectively ought not to go before the tribunal as these items were not included in the reference. I can see the force of that argument. On the other hand, it appears to the court that these three items including the first item, i.e. union recognition, are integral parts of the dispute. The dispute is the essence. If there is a dispute, the parties must know of it. It is not necessary to

formulate them in the reference. Suffice it for these items to be formulated by the parties themselves when they go before the tribunal. That is the meaning and effect of regulation 8.

Lastly, it was said that the company was not bound by the union membership check as it had no opportunity to verify the union books. The company claimed that only 20 per cent. of its workmen were union members. That, in my opinion, is begging the question of recognition. The question here is plain, and that is whether there is a trade dispute. It seems to me that there is a trade dispute. The company did not see fit to grant recognition to the union as representative of its members and therefore a dispute exists. The dispute has been referred to the Minister by a trade union representing the workmen members and therefore the Minister has power to refer it to the tribunal.

For these reasons the motion is dismissed with costs.

Motion dismissed.

Solicitors: *N. Sharma; R. Rajasingam & Co.*

D. E. LTD. v. COMPTROLLER OF INCOME TAX

[O.C.J. (Gill J.) June 26, 1967]
[K.L. — Civil Appeal No. 4 of 1966]

Income Tax — Notices of assessments — Refusal of comptroller to amend — Appeal to Income Tax Board of Review — Requirement of security — Failure to furnish and consequences — Failure to provide security no bar to appeal — Income Tax Ordinance, 1947, ss. 75(1) & 76(9) — Effect of repeal of s. 81 and amendment of s. 82 upon s. 76(9).

By a notice of assessment dated October 9, 1964 the Comptroller of Income Tax assessed the appellants for income tax for the years of assessment 1962 and 1963. On November 5, 1964 the appellants applied to the comptroller for the two assessments to be reviewed and revised. On the refusal by the comptroller on February 17, 1965 to amend the two assessments, the appellants lodged an appeal to the Income Tax Board of Review under section 75(1) of the Income Tax Ordinance. On July 8, 1965 the board, on the application of the comptroller, made an order under section 76(9) of the Ordinance requiring the appellants to furnish security in the sum of $20,000 within one week and adjourned the hearing of the appeal to August 18, 1965. The appellants having failed to furnish the security as ordered, the board, when the appeal came on for hearing on August 18, 1965, ruled that, as the appellants had failed to furnish security, it could not proceed with the hearing of the appeal and that the appeal was deemed to be withdrawn.

An appeal was lodged to the High Court against the decisions of the board. The main ground of appeal was that the board has no power to dismiss an appeal or to deem it as withdrawn because of failure to comply with an order for security made under section 76(9) of the Ordinance.

Held: (1) the effect of the repeal of section 81 and amendment of section 82 is that an appeal to the board now no longer puts the tax in abeyance because payment of the tax within one month of the service of the notice of assessment is required notwithstanding. The provision for security under section 76(9) pending appeal in practice become superflous and unnecessary because the comptroller can commence proceedings for recovery of the tax after the lapse of one month as he did in this case;

(2) failure to provide security is no bar to hearing of the appeal. The assumption that security under section 76(9) is security for prosecution of the appeal is wrong and it does not mean that appeal is at an end if security is not provided. The board will be directed to hear the appeal.

INCOME TAX APPEAL.

K. Rajanayagam for the appellants.

Wan Hamzah bin Salleh (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Gill J.: By a notice of assessment dated 9th October, 1964 the Comptroller of Income Tax assessed the appellants for income tax for the years of assessment 1962 and 1963. On 5th November, 1964 the appellants applied to the comptroller for the two assessments to be reviewed and revised. On the refusal by the comptroller on 17th February, 1965 to amend the two assessments, the appellants lodged an appeal to the Income Tax Board of Review under section 75(1) of the Income Tax Ordinance, 1947 on 20th February, 1965. On 8th July, 1965 the board, on the application of the comptroller, made an order under section 76(9) of the Ordinance requiring the appellants to furnish security in the sum of $20,000 within one week and adjourned the hearing of the appeal to 18th August, 1965. The appellants having failed to furnish the security as ordered, the board, when the appeal came on for hearing on 18th August, 1965, ruled that, as the appellants had failed to furnish security, it could not proceed with the hearing of the appeal and that the appeal was deemed to be withdrawn. The appellants have now appealed to this court against the decisions of the board given on 8th July, 1965 and on 18th August, 1965.

The main ground of appeal to this court is that the board has no power to dismiss an appeal or to deem it as withdrawn because of the failure of an appellant to comply with an order for security made under section 76(9) of the Ordinance, which reads as follows:—

> "Notwithstanding anything contained in section 82 of this Ordinance, the board may, on the application of the comptroller made at any time after notice of appeal has been given, require the appellant to furnish security, in such sum and within such time as may be specified, for payment of tax, and if security is not furnished in the sum and within the time specified, the tax assessed by the comptroller shall become payable and recoverable forthwith."

For reasons which will be clear from my judgment, it is relevant to consider section 82 of the Ordinance as amended by the Income Tax